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NO. 83-2022

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**IN THE UNITED STATES SUPREME COURT**  
**October Term, 1984**

**JAMES E. GRIBBLE, Petitioner - Pro Se**

**VS.**

**JAMES W. BUCKNER, et al., Respondents**

**On Appeal from the Sixth Circuit Court of Appeals**

**Brief in Opposition to Petition for Certiorari**

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**Brief In Opposition to Petition for Certiorari**

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## STATEMENT OF THE CASE

This pro se petitioner files this appeal from an order of the United States Court of Appeals for the Sixth Circuit which affirmed a District Court judgment dismissing this petitioner's civil rights complaint filed pursuant to 42 U.S.C. §1983. The Sixth Circuit affirmed this dismissal by the District Court on several grounds:

First, the Sixth Circuit affirmed the dismissal on the grounds that the statute of limitations had run and that this petitioner's complaint was time barred by the applicable Tennessee statute of limitations.

Secondly, the Sixth Circuit Court of Appeals denied the plaintiff's motion for reconsideration not only because the complaint was barred by the statute of limitations but because it also was barred by the doctrines res judicata and collateral estoppel.

The third reason for the Sixth Circuit denying the petitioner's motion for reconsideration was the fact that his complaint failed to state a cause of action. The Sixth Circuit pointed out that the plaintiff can bring an action for the wrong alleged in his complaint through a suit for conversion in state court. Therefore, the Court concluded that his complaint failed to state a cause of action.

## SUMMARY OF ARGUMENT

The decision of the Sixth Circuit Court is in accordance with the law as it pertains to the statute of limitations relating to §1983 actions. In this particular case, the respondent admits that he was aware in 1974 of the seizure of his animals which is the basis for his cause of action. However, he did not file suit against these

defendants until eight (8) years after the statute of limitations had begun to run. The applicable Tennessee statute of limitations states that this action must be filed within one (1) year from the date that he knew or should have known of his cause of action.

In considering the petitioner's request for reconsideration of their decision, the Sixth Circuit Court of Appeals also examined alternative reasons for affirming the dismissal of the petitioner's complaint. Their doing so did not violate any judicial practice standard. They held that the respondent's action was also barred by the doctrines of res judicata, collateral estoppel and that the petitioner's complaint failed to state a cause of action. Since there is no deviation from accepted judicial practice this is not a case in which the grant of a Writ of Certiorari is justified.

## ARGUMENT

### I. THE SIXTH CIRCUIT COURT OF APPEALS PROPERLY RULED THAT THE PETITIONER'S CAUSE OF ACTION WAS BARRED BY THE RUNNING OF THE APPLICABLE STATUTE OF LIMITATIONS.

Even if the facts that the petitioner has alleged in his complaint are true, **Westlake v. Lucas**, 537 F. 2d 857, 858 (6th Cir. 1976), the Sixth Circuit Court of Appeals properly dismissed the complaint because it was barred by the running of the statute of limitations. It is well settled law and is undisputed in this case that the one (1) year statute of limitation as set fourth in T.C.A. 28-3-104 (a) is determinative in this case. **Wright v. State of Tennessee**, 628 F. 2d 949, 951 (6th Cir. 1980).

In paragraph seven of the petitioner's complaint, he expressly states that his live stock were seized on or

about April 10, 1974. He goes on further to state that he thought his live stock were in the possession and control of the Rutherford County Sheriff's Department during this period of time. These allegations are tantamount to admitting that he knew his cattle had been seized and who had seized them as of April 10, 1974. However, he did not file his complaint in this action until November 19, 1982 which is more than eight (8) years after the seizure of his cattle.

The petitioner attempts to circumvent the statute of limitations by arguing that the statute was tolled because the defendants fraudulently concealed the true location of his seized cattle. As pointed out by the Sixth Circuit, the petitioner mistakenly seems to think that his cause of action accrued when the cattle were sold. This belief is simply not true. It is obvious that his cause of action arose when the cattle were seized. It is well settled law that a statute of limitations will not be tolled if the plaintiff was on reasonable inquiry or notice of facts which would have alerted him to his potential cause of action. **Phillips v. Phillips**, 526 S.W. 2d 439, 440 (Tenn. 1975); **Clark v. American National Bank and Trust Company, et al.**, 531 S.W. 2d 563, 573 (Tenn. Ct. App. 1974). Likewise, the statute is not tolled if the plaintiff knew of his cause of action or negligently failed to pursue it. **Ray v. Scheibert**, 450 S.W. 2d 579, 581 (Tenn. 1969); **Ocean Acres, LTD., v. Dare County Board of Health**, 707 F. 2d 103, 105 (4th Cir. 1983). It should be noted that the petitioner never does allege that the fact that his cattle were seized and who seized his cattle was concealed from him. This fact is the basis for his cause of action and not the selling of the cattle.

The petitioner shows that he was aware of his potential claim against the defendants by the facts he alleges in his complaint. As noted by the Sixth Circuit, the petitioner expressly states in his complaint that he has been trying to regain his property since the seizure. This Court



has stated that a cause of action accrues when the illegal act occurs and not when the consequences of the act become painful. **Delaware State College v. Rieks**, 449 U.W. 250, 258 (1980).

The barring of causes of actions by statutes of limitations is not a mere technicality. "Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well ordered judicial system." **Board of Regents v. Tomanio**, 446 U.S. 478, 487 (1980). Furthermore, in §1983 actions, state statutes of limitations and applicable tolling rules "are more than a technical obstacle to be circumvented if possible. As in most cases, they are binding rules of law." **Id** at 484.

The petitioner clearly admits in his complaint that he knew of the seizure of his cattle and their conversion by the defendants on or about April 10, 1974. That is when he discovered his injury and that is when the statute of limitations began to run in this particular case. The petitioner's admission that he knew of his cause of action prevents the tolling of the statute.

## II. THE SIXTH CIRCUIT COURT VIOLATED NO JUDICIAL PRACTICE IN CONSIDERING ALTERNATIVE GROUNDS FOR BARRING THE PETITIONER'S CAUSE OF ACTION.

The petitioner accuses the Six Circuit Court of Appeals of departing "from its role as an adjudicative body" and assuming "the role of an attorney for the respondents" because the justices *sua sponte* considered whether the petitioner's claim was barred by res judicata and collateral estoppel and for their ruling that he failed to state a claim. (Petitioner's Brief p. 20.)

A Court of Appeals is empowered to affirm a District Court judgment for reasons other than those of

the lower court. **Brown v. Allen**, 344 U.S. 443, 459 (1953); **Herm v. Stafford**, 663 F. 2d 669, 684 (6th Cir. 1981); **City of Cleveland v. Cleveland Aluminating Co.**, 570 F. 2d 123, 128 (6th Cir. 1978). In the case of **J.E. Riley Investment Company v. Commissioner of Internal Revenue**, 311 U.S. 55, 59 (1940) it is stated that "where the decision below is correct it must be affirmed by the appellate court though the lower tribunal gave a wrong reason for its actions".

The petitioner also seems to assume that by giving alternative reasons for barring this cause of action, the Sixth Circuit Court of Appeals abandoned their theory that the statute of limitations barred his cause of action. This statement is simply not true.

### III. THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL BAR THE PETITIONER'S COMPLAINT IN THIS ACTION.

The Sixth Circuit Court has properly applied the doctrines of res judicata and collateral estoppel to bar the petitioner's cause of action in this cause. The petitioner pressed a counter claim against the defendant, Carlton, in a lawsuit that was tried in December of 1977. The petitioner was awarded a judgment in the amount of \$42,100.00. The petitioner has stated in his brief that none of the other defendants were ever mentioned or named in this suit. (Petitioner's Brief pg. 15.) This is a misleading statement by the petitioner. In response to the petitioner's counter claim the defendant, Carlton, asserted the following defense:

"Cross-defendant avers that he has the animals in question which allegedly belonged to the cross-complainant, but that he has them under direct order of the General Sessions Court for Rutherford County, Tennessee, having them at the direct instruction of

the Court and the county law enforcement officers and that he has kept said animals safe and in good health since that time, and he is therefore entitled to compensation of at least \$6,000.00 for the time, food, trouble and expenses incurred by in in protecting and caring for cross-complainant's animals."

This answer was filed on April 23, 1975. This allegation gave the petitioner explicit notice of the involvement of the other defendants and he should have amended and added them as co-defendants.

Res Judicata and collateral estoppel doctrines attach to a judgment based on a counter claim. **City of Parma, Ohio v. Levi**, 536 F. 2d 133 (6th Cir. 1976). The Sixth Circuit Court of Appeals stated it so succinctly when they said:

"Under these doctrines, the parties and their privies are barred from relitigating in a subsequent action matters which were raised and which could have been raised regarding the subject matter in the prior action. See **Nathan v. Rowan**, 651 F. 2d 1223, 1226 (6th Cir. 1981), and cases cited therein. A later suit is barred even though a different legal theory of recovery is advanced in the second suit. **Harrington v. Vandalia-Butler Bd. of Ed.**, 649 F. 2d 434, 437 (6th Cir. 1981); **Cemer v. Marathon Oil Company**, 483 F. 2d 830, 832 (6th Cir. 1978). Privity existed among the defendants as plaintiff alleges that the defendants conspired and acted in concert to deprive him of his animals. They, therefore, had a sufficient legal interest that was dependent wholly or in part on the outcome of the state lawsuit. **Vulcan, Inc., v. Fordess Corp.**, 658 F. 2d 1106, 1109-1110 (6th Cir. 1981)."

It is also further pointed out in the case of **In Re Carlton**, 26 B.R.W. 202, 204 (Bank. M.D. Tn 1982), that a preliminary hearing was conducted on May 9, 1974. This preliminary hearing dealt with charges filed against the petitioner for mistreatment of animals. It is obvious

that at this time the petitioner knew of the seizure of his cattle and who had seized them. It further supports the contentions of the respondents that he knew or should have known to add them as defendants in his counter claim suit.

#### IV. PETITIONER'S COMPLAINT FAILED TO STATE A CAUSE OF ACTION.

Because the petitioner can seek redress for his alleged wrong in the state courts through a tort suit for conversion, the petitioner has failed to state a cause of action under the United States Constitution for deprivation of property without due process. **Parratt v. Taylor**, 451, U.S. 527 (1981). The Sixth Circuit Court of Appeals stated that there was no allegation that this state remedy does not satisfy due process.

The Court went on to say that the petitioner does have a well recognized common law remedy in Tennessee for the wrongful withholding or conversion of his live stock. **Jack Strader Tire Company v. Manufacturers Acceptance Corporation**, 221 Tenn. 631, 429 S.W. 2d 428, 429-430 (Tenn. 1968). These common law remedies will satisfy due process requirements even if they do not give full relief that might be attainable under 42 U.S.C. §1983. **Vicory v. Walton**, 721 F. 2d 1062, 1064-1065 (6th Cir. 1983).

#### CONCLUSION

It is the contention of the respondents in this case that the petitioner's petition for certiorari should not be granted. The Sixth Circuit Court of Appeals was clearly correct in stating that the plaintiff's cause of action was barred by the statute of limitations. The allegations in his complaint clearly show that he was aware of the facts that gave him his cause of action. The fact that

he was brought into court and given a preliminary hearing further enhances the respondent's contention that he knew or should have known that his cattle were seized and who had seized them.

The Sixth Circuit Court of Appeals was clearly correct in applying the doctrines of collateral estoppel and res judicata. It is obvious from looking at all of the facts that have been presented to this Court that the plaintiff knew or should have known that these individuals were involved and he should have included them in any lawsuit that he filed. His failure to add them as defendants in his lawsuit against Larry Carlton is the basis for these doctrines.

The respondents further assert that the petitioner's complaint does fail to state a cause of action since he does have a remedy for conversion in the state courts.

Respectfully submitted,

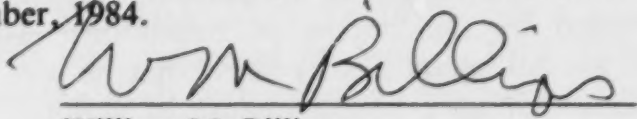
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#### CERTIFICATE OF SERVICE

I do hereby certify that I have mailed a true and exact copy of the foregoing to Mr. Larry Gribble, Route #4, P.O. Box 440, McMinnville, TN 37110 on this the 27th day of September, 1984.

  
William M. Billips